



CITY OF
MESA

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Ms. Donna M. Searcy, Secretary
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Dear Ms. Searcy:

Enclosed please find the comments of the City of Mesa concerning Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992 (MM Docket No. 92-266). The City welcomes the opportunity to provide these comments and is pleased to be a part of the inquiry process.

Sincerely,

Eric P. Norenberg
Administrative Assistant II

Enclosures

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Implementation of Sections of the)
Cable Television Consumer Protection) MM Docket No. 92-266
and Competition Act of 1992)
)
Rate Regulation)

TO: The Commission

Comments of the City of Mesa, Arizona

The City of Mesa, Arizona, submits the following comments in response to the Commission's Notice of Proposed Rulemaking (released December 24, 1992).

Introduction

In the Notice of Proposed Rulemaking, the Commission requested comment on a variety of issues. However, in the interest of expediency, Mesa's comments will focus only on those issues which are of greatest importance and concern to Mesa or those issues in which Mesa's particular experiences might be of help to the Commission during its deliberations.

Discussion

II. Proposed Implementations

A. Regulation of Cable Service Rates

2. Standards and Procedures for Identifying Cable Systems Subject to Rate

Regulation for Provision of Cable Service

b. Discussion

3. Regulation of the Basic Service Tier Rates

**b. Regulation of the Basic Service Tier by Local Franchising Authorities
and the Commission**

Effective Competition

The City of Mesa has two cable television companies licensed to serve the entire City and a third company licensed for one quarter-section (a square half mile). The first cable system has been owned by several companies since construction and operation of the system in Mesa began nearly 15 years ago. This company (Times Mirror Cable of Arizona) serves nearly every part of Mesa. The exceptions are areas where the low density of homes has not made it economically feasible for Times Mirror to extend service and areas where the private development (single-family homes, apartments, condominiums, and mobile home parks) has either asked that no cable television be installed or has chosen to subscribe to a SMATV or the other citywide cable operator. This second company (CableAmerica) was licensed by the City in 1987 to overbuild and compete with Times Mirror. Since then, CableAmerica has constructed its system at a steady pace, but has only overlapped 19 percent of the Times Mirror system. (The City of Mesa covers 122 square miles.)

Because of the unique situation described above, we have found applying the first two tests for effective competition to be somewhat difficult. The first test: Effective competition means that fewer than 30 percent of the households in the franchise area subscribe to the cable service of a cable system. This seems a strange way of looking at this question. Is existence of effective competition the only possible reason for less than 30 percent of a franchise area subscribing to any one cable company? No. The cable company could have service available to less than the entire franchise area (for example: Mesa's franchise area is the entire City, but the service area of CableAmerica because the system is still under construction, is currently limited to roughly the western third of the City). Or, the quality of service and/or the price to subscribe could be such that a large number of people feel they have no interest in subscribing. The Commission should look closely at this issue. It appears it might be more accurate to assert that a cable company has no effective competition if 70 percent of the households subscribe, rather than believing there must be effective competition if less than 30 percent are subscribing.

We also are interested in clarifying whether the final rules will consider franchise area to be the entire area a cable operator is licensed to serve, or the actual area where service is currently available. In Mesa, neither of the citywide cable licensees passes all of the approximately 145,000 dwelling units. (Some are not passed because of low density, others because of unregulated SMATV systems or exclusion.) Of the dwelling units 115,000 passed by Times Mirror's cable, 42 percent subscribe.

For CableAmerica, this number is 37.4 percent (21,700 passed). We urge the Commission to define "franchise area" as the area where service is readily available. (In the case of systems under construction, this area would obviously grow over time.)

The second test for effective competition specifies that first, the providers must each offer cable to at least 50 percent of the homes in the franchise area, and second, the number of households subscribing to the smaller cable operator must exceed 15 percent of the households in the franchise area. CableAmerica has not yet grown to the point at which it can offer services to at least 50 percent of the households in Mesa, but it does have 15 percent of the households in Mesa as subscribers. Again, the question of franchise area versus service area presents itself.

All of this leaves our City unsure as to how regulation could be applied fairly to Times Mirror and/or CableAmerica. We feel that without a doubt CableAmerica feels full competition from Times Mirror since the CableAmerica service area is fully overlapped by Times Mirror. However, the effect of CableAmerica on Times Mirror is less definite. We nevertheless perceive the presence of CableAmerica as having a positive effect on Times Mirror's service to Mesa subscribers (as Times Mirror has nearly completed a system upgrade and begun installing fiber optics since CableAmerica began operations).

With all of this experience and our unique situation, the City of Mesa feels that it will not fit easily into the mold formed by Congress' definitions of effective competition. We would recommend that the Commission consider establishing rules that would take into account an overbuild in progress. Based upon the Commission's tentative conclusion that the effective competition tests be applied to each system in a franchise area, we have concern that since, in our situation, one cable company (CableAmerica) faces effective competition, but the other does not, we might end up needing to regulate one but not the other. We feel we have a situation where competition exists for both companies (without fitting the Act's definitions) and feel it should be preserved. Thus, we recommend permitting franchising authorities the choice of regulating or not when one company faces effective competition, but not the other. (Reference paragraphs 7 and 18 in the Notice.)

Joint Regulatory Jurisdiction

Another area of concern for the City of Mesa is joint regulatory jurisdiction. Mesa's larger cable television company also serves most other communities in the Valley. Because Times Mirror

assembled its current large operation from many smaller systems of various quality and channel capacity, the programming available is not uniform. In addition, the geography of these communities ranges from dense urban residential to low-density, almost rural areas. Thus, if we were required to jointly regulate, there would undoubtedly be unresolvable disagreement as to appropriate rates, the level of service available and the operating costs for different communities varies so widely.

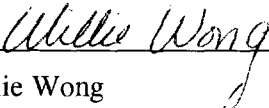
The City of Mesa would recommend the Commission consider the following: First, create a mechanism to allow franchising authorities to abstain from joint regulation (either because of the desire not to regulate, because of effective competition, or as a result of differing system or community characteristics). Second, the Commission should set guidelines for joint regulation that would aid in settling disagreements and take into account differing conditions. (Paragraph 21.)

3. Regulation of the Basic Service Tier Rates

b. Regulations Governing Rates of the Basic Service Tier

The City of Mesa supports the Commission's intent to utilize a benchmark method for regulating rates. This method has clear advantages in time and cost savings for both the franchising authority and the cable company. We support a benchmark method that takes into account varying operating conditions.

Respectfully submitted,



Willie Wong
Mayor

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